

10/541468

Internes Aktenzeichen/Internal Reference: Le A 36 562

JC20 Rec'd PCT/PTO 01 JUL 2005

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PATENT COOPERATION TREATY

PCT


INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference LEA36562-WO	FOR FURTHER ACTION		See Form PCT/PEA416
International application No. PCT/EP2004/000539	International filing date (day/month/year) 23.01.2004	Priority date (day/month/year) 31.01.2003	
International Patent Classification (IPC) or national classification and IPC C12Q1/68			
Applicant BAYER HEALTHCARE AG et al.			

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:
 - a. ☐ sent to the applicant and to the International Bureau) a total of sheets, as follows:
 - ☐ sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
 - ☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
 - b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:
 - ☒ Box No. I Basis of the opinion
 - ☐ Box No. II Priority
 - ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - ☒ Box No. IV Lack of unity of invention
 - ☒ Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - ☐ Box No. VI Certain documents cited
 - ☐ Box No. VII Certain defects in the international application
 - ☐ Box No. VIII Certain observations on the international application

Date of submission of the demand 12.08.2004	Date of completion of this report 19.01.2005
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Seroz, T Telephone No. +49 89 2399-7789



INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITYInternational application No.
PCT/EP2004/000539

Box No. 1 Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-67 as originally filed

Claims, Numbers

1-16 as originally filed

- ☒ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing *(specify)*:
 - ☐ any table(s) related to sequence listing *(specify)*:
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing *(specify)*:
 - ☐ any table(s) related to sequence listing *(specify)*:

* If item 4 applies, some or all of these sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT
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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 6, 8, 10-12

because:

☒ the said international application, or the said claims Nos. 11, 12 relate to the following subject matter which does not require an international preliminary examination (specify):

see separate sheet

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for the said claims Nos. 6, 8, 10

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☒ See separate sheet for further details

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/000539

Box No. IV Lack of unity of invention

1. ☒ In response to the invitation to restrict or pay additional fees, the applicant has:
- ☐ restricted the claims.
 - ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☒ neither restricted nor paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
- ☐ complied with.
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☐ all parts.
 - ☒ the parts relating to claims Nos. 1-5, 7, 9, 11-16 (all partially) .

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-5, 7, 9, 11-16
	No: Claims	
Inventive step (IS)	Yes: Claims	1-5, 7, 9, 11-16
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-5, 7, 9, 13-16
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/000539

Supplemental Box relating to Sequence Listing

Continuation of Box I, item 2:

1. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this report has been established on the basis of:
 - a. type of material:
 - ☒ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☒ in written format
 - ☒ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed
 - ☒ filed together with the international application in computer readable form
 - ☐ furnished subsequently to this Authority for the purposes of search and/or examination
 - ☐ received by this Authority as an amendment on
2. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
3. Additional observations, if necessary:

see separate sheet

Additional remarks to item I

This first written opinion was established on the application documents as filed and the written sequence listing pages 1-177, SEQ ID No 1 to SEQ ID No 292.

Additional remarks to item III

According to Rule 66.1(e) PCT claims relating to inventions in respect of which no international search report has been established need not to be the subject of international preliminary examination.

As a consequence, this preliminary written opinion is established for claims 1-5, 7, 9, 11-16 (all partially).

As far as claims 11 and 12 concern diagnostic methods of an human body, they relate to a subject-matter considered by this authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(i) PCT).

Additional remarks to item IV

The objection as lack of unity raised in the international search report (ISR) is maintained. The reasons for the objection are the same as those indicated in the ISR. As the Applicant has not had a search report drawn up on inventions 2-292 (Rule 66.2 PCT), the application will be prosecuted on the basis of the invention in respect of which a search has already been carried out, in the present case, invention 1.

Additional remarks to item V

Although the closest prior art Hwang DM et al., 1997 relates to genes involved in cardiovascular diseases, it does neither describe the polynucleotide sequence as set forth in SEQ ID No 1 nor suggest the use of such a polynucleotide for determining whether a human subject is at risk of developing a cardiovascular disease or for determining a patient's individual response to statin therapy.

Thus, in view of the prior art documents cited in the International Search Report, it seems that **claims 1-5, 7, 9, 11-16** are novel and inventive (Article 33(2)(3) PCT). In addition, **claims 1-5, 7, 9, 13-16** are susceptible of industrial application (Article 33(4) PCT).

PCT REQUEST

LEA36562-WO

Original (for SUBMISSION) - printed on 19.01.2004 11:40:46 AM

0	For receiving Office use only	
0-1	International Application No.	
0-2	International Filing Date	
0-3	Name of receiving Office and "PCT International Application"	
0-4	Form - PCT/RO/101 PCT Request	
0-4-1	Prepared using	PCT-EASY Version 2.92 (updated 01.11.2003)
0-5	Petition The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty	
0-6	Receiving Office (specified by the applicant)	European Patent Office (EPO) (RO/EP)
0-7	Applicant's or agent's file reference	LEA36562-WO
I	Title of invention	SINGLE NUCLEOTIDE POLYMORPHISMS AS PREDICTIVE DIAGNOSTICS FOR ADVERSE DRUG REACTIONS (ADR) AND DRUG EFFICACY
II	Applicant	
II-1	This person is:	applicant only
II-2	Applicant for	all designated States except US
II-4	Name	BAYER HEALTHCARE AG
II-5	Address:	D-51368 Leverkusen Germany
II-6	State of nationality	DE
II-7	State of residence	DE
II-8	Telephone No.	0214 30 61455
II-9	Facsimile No.	0214 30 53482
III-1	Applicant and/or inventor	
III-1-1	This person is:	applicant and inventor
III-1-2	Applicant for	US only
III-1-4	Name (LAST, First)	STROPP, Udo
III-1-5	Address:	Suitbertusweg 8 D-42781 Haan Germany
III-1-6	State of nationality	DE
III-1-7	State of residence	DE

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III-2	Applicant and/or inventor	
III-2-1	This person is:	applicant and inventor
III-2-2	Applicant for	US only
III-2-4	Name (LAST, First)	SCHWERS, Stephan
III-2-5	Address:	Düsseldorferstr. 35 D-51145 Köln Germany
III-2-6	State of nationality	DE
III-2-7	State of residence	DE
III-3	Applicant and/or inventor	
III-3-1	This person is:	applicant and inventor
III-3-2	Applicant for	US only
III-3-4	Name (LAST, First)	KALLABIS, Harald
III-3-5	Address:	Wolfskaul 8 D-51061 Köln Germany
III-3-6	State of nationality	DE
III-3-7	State of residence	DE
IV-1	Agent or common representative; or address for correspondence The person identified below is hereby/has been appointed to act on behalf of the applicant(s) before the competent International Authorities as:	common representative
IV-1-1	Name	BAYER HEALTHCARE AG
IV-1-2	Address:	Law & Patents Patents and Licensing D-51368 Leverkusen Germany
IV-1-3	Telephone No.	0214 30 71166
IV-1-4	Facsimile No.	0214 30 53482

V	Designation of States	
V-1	Regional Patent (other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	<p>AP: BW GH GM KE LS MW MZ SD SL SZ TZ UG ZM ZW and any other State which is a Contracting State of the Harare Protocol and of the PCT</p> <p>EA: AM AZ BY KG KZ MD RU TJ TM and any other State which is a Contracting State of the Eurasian Patent Convention and of the PCT</p> <p>EP: AT BE BG CH&LI CY CZ DE DK EE ES FI FR GB GR HU IE IT LU MC NL PT RO SE SI SK TR and any other State which is a Contracting State of the European Patent Convention and of the PCT</p> <p>OA: BF BJ CF CG CI CM GA GN GQ GW ML MR NE SN TD TG and any other State which is a member State of OAPI and a Contracting State of the PCT</p>
V-2	National Patent (other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	<p>AE AG AL AM AT AU AZ BA BB BG BR BW BY BZ CA CH&LI CN CO CR CU CZ DE DK DM DZ EC EE EG ES FI GB GD GE GH GM HR HU ID IL IN IS JP KE KG KP KR KZ LC LK LR LS LT LU LV MA MD MG MK MN MW MX MZ NA NI NO NZ OM PG PH PL PT RO RU SC SD SE SG SK SL SY TJ TM TN TR TT TZ UA UG US UZ VC VN YU ZA ZM ZW</p>
V-3	National Patent (States which have become party to the PCT after the issuance of this version of EASY)	And all countries which acceded to the PCT on the date of filing.
V-5	Precautionary Designation Statement In addition to the designations made under items V-1, V-2 and V-3, the applicant also makes under Rule 4.9(b) all designations which would be permitted under the PCT except any designation(s) of the State(s) indicated under item V-6 below. The applicant declares that those additional designations are subject to confirmation and that any designation which is not confirmed before the expiration of 15 months from the priority date is to be regarded as withdrawn by the applicant at the expiration of that time limit.	
V-6	Exclusion(s) from precautionary designations	NONE
VI-1	Priority claim of earlier regional application	
VI-1-1	Filing date	31 January 2003 (31.01.2003)
VI-1-2	Number	03002212.3
VI-1-3	Regional Office	EP

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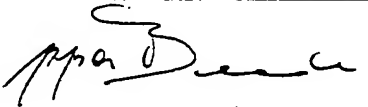
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VI-2	Priority claim of earlier regional application		
VI-2-1	Filing date	03 February 2003 (03.02.2003)	
VI-2-2	Number	03002153.9	
VI-2-3	Regional Office	EP	
VI-3	Priority document request The receiving Office is requested to prepare and transmit to the International Bureau a certified copy of the earlier application(s) identified above as item(s):	VI-1, VI-2	
VII-1	International Searching Authority Chosen	European Patent Office (EPO) (ISA/EP)	
VIII	Declarations	Number of declarations	
VIII-1	Declaration as to the identity of the inventor	-	
VIII-2	Declaration as to the applicant's entitlement, as at the international filing date, to apply for and be granted a patent	-	
VIII-3	Declaration as to the applicant's entitlement, as at the international filing date, to claim the priority of the earlier application	-	
VIII-4	Declaration of inventorship (only for the purposes of the designation of the United States of America)	-	
VIII-5	Declaration as to non-prejudicial disclosures or exceptions to lack of novelty	-	
IX	Check list	number of sheets	electronic file(s) attached
IX-1	Request (including declaration sheets)	5	-
IX-2	Description (excluding sequence listing part)	167	-
IX-3	Claims	4	-
IX-4	Abstract	1	EZABST00.TXT
IX-5	Drawings	0	-
IX-7a	Sub-total number of sheets	177	
IX-6	Sequence listing part of description	177	-
IX-7	TOTAL	354	
	Accompanying items	paper document(s) attached	electronic file(s) attached
IX-8	Fee calculation sheet	✓	-
IX-9	Original separate power of attorney		-
IX-16	Sequence listing in computer readable form:		
IX-16 (-i)	copy submitted for the purposes of international search under Rule 13ter only (and not as part of the international application)	-	1 Diskette
IX-17	PCT-EASY diskette	-	Diskette
IX-19	Figure of the drawings which should accompany the abstract		
IX-20	Language of filing of the international application	English	

PCT REQUEST

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Original (for SUBMISSION) - printed on 19.01.2004 11:40:46 AM

X-1	Signature of applicant, agent or common representative	
X-1-1	Name (LAST, First)	BAYER HEALTHCARE AG

ppa. Dr. Frank Burkert i. V. Dr. Karsten Schmidt
FOR RECEIVING OFFICE USE ONLY

10-1	Date of actual receipt of the purported international application	
10-2	Drawings:	
10-2-1	Received	
10-2-2	Not received	
10-3	Corrected date of actual receipt due to later but timely received papers or drawings completing the purported international application	
10-4	Date of timely receipt of the required corrections under PCT Article 11(2)	
10-5	International Searching Authority	ISA/EP
10-6	Transmittal of search copy delayed until search fee is paid	

FOR INTERNATIONAL BUREAU USE ONLY

11-1	Date of receipt of the record copy by the International Bureau	
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